

# Policy #39 - MLSSAZ Corrections Policy

*Policy Adopted March 21, 2017*

*Policy Effective May 1, 2017*

To ensure the integrity of the MLS and the MLS database, this Corrections Policy has been established in accordance with Section 7 of the MLS Rules & Regulations. Sanctions will be issued in accordance with this policy. This policy is subject to change upon approval of the Board of Directors. This policy is not all-inclusive, does not reflect violations of the Code of Ethics, and does not replace Professional Standards Enforcement through your local Association of REALTORS®. The Board of Directors understands that the MLS database is an integral part of your day-to-day business and has instituted this Corrections Policy to make a focused effort to increase the accuracy and protect the integrity of the MLS.

## Definitions

**Complainant** – A Participant or Subscriber who files a complaint against another Participant or Subscriber.

**Days** – Unless otherwise noted, all references to Days shall mean calendar days.

**Firm** – An office or group of offices filed as a single corporate entity. For the purpose of this policy, a firm refers to the main office and any branch offices.

**Participant** – The Designated REALTOR® for any MLSSAZ Brokerage Firm.

**Participant as an Individual** – An individual who holds the title of Designated REALTOR® but is referenced as an individual and not the responsible member of their company.

**Subscriber** – Non-principal brokers, sales associates, and licensed and certified appraisers affiliated with Participants.

**Schedule of Fines** – A list of monetary fines to be used as a guide for assessment of monetary sanctions by MLS Staff or the MLS Standards Committee. List is not all-inclusive and is available in Section 26 of the MLSSAZ Rules and Regulations.

**Sanctions** – a monetary or non-monetary penalty for violations of the MLS Rules and Regulations, including Letter of Concern, Letter of Warning, monetary fine, or mandatory education.

**Respondent** – A Participant or Subscriber who is to respond to a complaint filed by another Participant or Subscriber.

## **Section 1 – Reporting a Potential Violation**

### **1.1 How Violations Originate**

Violations are reported to the MLS in a variety of ways. The most common methods of reporting violations to the MLS are:

- Reported to MLS Staff
- Random checks of the database
- Result of listing audit. MLS Rules/Regulations allow MLS staff to request copies of listing forms and change orders
- Reporting of concerns from the general public

Violations reported to the MLS are confidential. MLS staff will not disclose the name of the individual who reported the violation.

### **1.2 Reporting Violations**

Violations are to be reported to the MLS by using “Report Error” option in the MLS or by sending a direct e-mail to MLS staff at [errors@mlssaz.com](mailto:errors@mlssaz.com).

### **1.3 Required Information When Reporting**

When reporting violations, the following information is required for verifying and processing of violations:

- Name and office of the alleged responsible Participant or Subscriber
- Nature of the violation (be as specific as possible, i.e., when it occurred, the MLS #, etc.).

### **1.4 Types of Violations**

There are three main types of violations, Correctable Violations, Non-Correctable Violations, and Behavioral Violations. Correctable violations are typically listing input violations involving incorrect information, agent/brokerage branding, and remarks violations which can be corrected in the MLS system. Non-Correctable violations are those where there is no opportunity for correction of the violation and include, but are not limited to, late listing input, failure to complete required forms, statistical manipulation, Lockbox Key sharing, and MLS access sharing. Behavioral violations are focused on a Subscriber’s actions and include but are not limited to security violations and showing violations.

## **Section 2 – Correction Process**

### **2.1 – Notice of Correction**

When a violation is reported, MLS staff will verify the validity and send a Notice of Correction to the Participant and Subscriber indicating the MLS listing, nature of the violation, and timetables for a resolution or response. All notices are sent via e-mail only. Notices are sent to the primary e-mail address of the listing Subscriber and the primary e-mail address of the Participant that are listed in the MLS system.

A notification sent by MLSSAZ to a Subscriber and/or Participant will be presumed received on the date e-mailed unless a delivery failure message has been received (Receipt Date).

## **2.2 Notice of Administrative Sanctions**

If the requested correction has not been appropriately addressed within two business days of the receipt of the Notice of Correction, a reminder message will be sent. If the violation is not corrected within 24 hours of when the reminder message is sent, appropriate sanctions will be issued according to the escalation scale in Section 3.a.2 of this policy.

The Participant or Subscriber may request a review of the administrative sanctions by submitting a Review Request Form to the MLS within five business days. The review will be conducted by the MLS Standards Committee. The MLS Standards Committee may approve a waiver of the sanctions issued by the MLS with a majority vote. If the waiver is not granted, the Subscriber may request an appeal by the MLS Board of Directors within 20 calendar days.

## **2.3 Notice of Review**

If a violation of the MLS Rules & Regulations is a Non-Correctable Violation or a Behavioral Violation, the initial Notice of Correction indicating two business days for correction will not be sent. The Subscriber and his/her Participant will only receive a Notice of Review indicating that the MLS Standards Committee will review the violation.

The MLS Standards Committee will review the violation and determine if sanctions are to be issued. Following the MLS Standards Committee Meeting, a notification will be sent to the Participant and Subscriber and will include an invoice for the amount of the fine if one was issued. Refer to MLSSAZ Rules and Regulations Section 26 for a schedule of fine amounts.

## **2.4 – Standards Committee Review – Correctable and Non Correctable Violations**

The MLSSAZ Standards committee is charged with reviewing alleged violations of the MLS Rules and Regulations and determining the sanctions to be issued. During the review process, the Respondent and their Participant will have the opportunity to address the Standards Committee regarding the alleged violation. After all relevant information has been presented, the MLS Standards Committee will rule whether or not an MLS Rule has been violated and what sanctions are to be issued.

## **2.5 Standards Committee Review – Behavioral Violations**

Behavioral Violations are reported to the MLS by submitting the Rules and Regulations Violation Form complete with all statements, evidence, and names of witnesses to the MLS. The Complainant must submit the form within 30 calendar days from the date of the alleged violation or 30 calendar days from the conclusion of the transaction between the Complainant and Respondent, whichever is later. Alleged Behavioral Violations will be initially reviewed by MLS Staff within 10 calendar days to confirm it meets the requirements for a Behavioral Violation or if it applies as a REALTOR® Code of Ethics violation. If the review determines that the alleged violation is a violation of the REALTOR® Code of Ethics, the Complainant will be advised to file a Code of Ethics complaint.

If the review determines that alleged violation is not a violation of the REALTOR® Code of Ethics and meets all of the requirements of a Behavioral Violation, the MLS will send a copy of the complaint to the Respondent where the Respondent may respond to the allegations with a written statement, evidence, and names of witnesses. The Respondent has 15 calendar days to respond to the notice.

A review by the MLS Standards Committee will be scheduled during the next meeting of the committee and will be communicated to both the Complainant and Respondent with the Notice of Review. The Notice of Review will outline the process to the Complainant and Respondent. During the review, the Complainant and Respondent will individually and separately have the opportunity to testify to the evidence presented to the Standards Committee and present any witnesses. After both the Complainant and Respondent have addressed the committee, the committee will rule on the alleged violation and if/what sanctions will be appropriate. The review will be recorded and made available to the MLS Board of Directors if an appeal is necessary.

MLSSASZ will communicate the decision and any sanctions to the Complainant and Respondent within 10 calendar days of the decision.

## **2.6 – Confidentiality**

MLSSAZ Staff will make every attempt to keep the identity of all parties confidential. If the identity of any party is to be made known to the committee, whether it is material to the process or because of attendance at the committee meeting, all committee members who belong to the same firm or may have a conflict will be excluded from hearing and ruling on the case.

## **2.7 – Communications of Results**

If at any time during the process, it is determined that the reported violation was not a violation of the rules, that fact will be communicated to the Complainant. For Correctable and Non-Correctable violations, any sanctions issued by the committee will only be made known to the Respondent and his/her Participant. For Behavioral Violations, both the Complainant, Respondent and his/her respective Participant will be notified of the decision of the Standards Committee.

## **Section 3 – Repeat Offender/Offense Policy**

The MLSSAZ Repeat Offender/Offense Policy (Repeat Policy) is a set of guidelines used by the MLS Standards Committee and MLS Staff regarding repeat violations of the MLSSAZ Rules and Regulations. One of the primary purposes of the MLS is to provide accurate and up to date information for the facilitation of cooperation and compensation between MLS Participants. With this in mind, the Repeat Policy is designed to escalate potential sanctions placed on Participants and Subscribers for repeat violations of the Rules and Regulations.

Repeat Offender/Offense Policy Defined

### **A. Repeat Offense**

#### **1. Definition:**

A repeat offense is defined as any Participant as an Individual or Subscriber who has had a total of three (3) or more violations of a specific rule, and where the total

violation count is greater than 10% of the Subscriber's current Active inventory, within one consecutive year from the most recent violation.

2. Repeat offenses shall be subject to the following escalation scale:
  - a. A Letter of Concern will be issued to the Subscriber and their Participant as an educational opportunity.
  - b. Automatic issuance of the appropriate fine as listed in Section 26 of the Rules and Regulations.
  - c. Fine amounts will continue to increment by a factor of 1 for each subsequent violation of the same type, and shall not exceed \$15,000, until no subsequent violations of the same type occur for one year. (1x\$50, 2x\$50, 3x\$50, etc.)

#### B. Repeat Offenders

1. Definition:

A repeat offender shall be defined as any Participant as an Individual or Subscriber who has had a total of ten (10) or more violations of the MLSSAZ Rules and Regulations within one consecutive year from the most recent violation.

2. Repeat offenders shall be subject to the following escalation scale:

- a. A Letter of Concern will be issued to the Subscriber and their Participant as an educational opportunity.
- b. Automatic issuance of the appropriate fine as listed in Section 26 of the Rules and Regulations.
- c. Fine amounts will continue to increment by a factor of 1 for each subsequent violation of the same type, and shall not exceed \$15,000, until no subsequent violations of the same type occur for one year. (1x\$50, 2x\$100, 3x\$50, etc.)

- C. If any Participant as an Individual or Subscriber reaches a total of twenty (20) total violations in one calendar year, the Participant or Subscriber, with his/her Participant, shall attend a mandatory hearing by the Board of Directors for additional sanctions as described in Section 7 - Compliance with Rules/Authority to Impose Discipline.
- D. If any Participant as an Individual or Subscriber has committed the same offense on the same listing, they shall automatically escalate to the repeat offense status and be subject to the provisions in section A.2.b above.
- E. If any individual Participant as an Individual or Subscriber has reached Repeat Offender or Offense status, the Participant or Subscriber may opt for a one-time buy down of one violation by attending an MLS training class suitable for the offense. The individual must submit a request for a buy-down within 5 business days of the issuance of the sanction and complete the MLS training class within 90 calendar days of the buy-down request.

## Section 4 – Calculation of Time Periods

### 4.1 Receipt of Notices

A notification sent by MLSSAZ to a Subscriber and/or Participant will be presumed received on the date e-mailed unless a delivery failure message has been received. Final dates for receipt of replies from the Subscriber or Participant will be included in all correspondence from MLSSAZ.

## **4.2 Initial Notification and Response**

In calculating time periods, calculation of time begins on the day after notification.

## **Section 5 – Due Date for Payment of Fines**

Fines will be placed on the Subscriber's billing account upon assessment. Should an appeal request be submitted in accordance with current policy, the amount will be removed from the Subscriber's account pending final determination. If the fine is upheld, the amount will be placed back on the Subscriber's account and payment will be subject to current MLSSAZ billing policies.

## **Section 6 – Right to Appeal Standards Committee Sanctions**

### **6.1 Initial Request for Appeal**

All Subscribers have the right to request an appeal of any sanction/fine issued by MLSSAZ. The MLS Board of Directors may uphold the sanctions issued from the MLS Standards Committee, overturn or modify the decision from the MLS Standards Committee, or send the decision back to the MLS Standards Committee for reconsideration.

For Behavioral Violations, the Complainant may appeal the decision of the MLS Standards Committee based on a procedural deficiency or lack of due process only. The Respondent may appeal based on misinterpretation or misapplication of a Rule, procedural deficiency or lack of due process, or may appeal the sanctions issued.

### **6.2 Requesting an Appeal**

Requests for an appeal must be submitted on the Appeal Request form no later than 20 calendar days after the date the notice of sanction/fine was issued and be accompanied by all supporting documentation for review at the appeal. Any required corrections must be made prior to requesting an appeal of a sanction. A request for Appeal will not be considered "received" until all required information is complete and properly signed (if applicable). No additional documents or evidence can be presented after the request has been submitted.

For Behavioral Violations, no additional evidence or witnesses may be presented during the appeal. The Board of Directors will receive a copy of the audio recording or a transcript of the recording and all written statements and evidence presented at the initial review.

### **6.3 Types of Appeal**

The Subscriber will have the option of selecting either a "Documents Only" appeal or to appear in person at the MLS Board of Directors Meeting. A "Documents Only" appeal will consist of any documents submitted with the Request for Appeal. For Behavioral Violations, no additional evidence or statements relating to the alleged violation may be submitted during the appeal process.

### **6.4 Make Up of an Appeal Panel**

A panel will consist of all members of the MLS Board of Directors present at the scheduled meeting. If a quorum is not established at the meeting, the appeal will be rescheduled for the next MLS

Board of Directors meeting. Directors employed by the same firm as the Subscriber or any director that may have a conflict of interest will be excused from the Appeal Panel.

### **6.5 Appeal Dates**

Appeals will be scheduled in conjunction with the MLS Board of Directors meetings.

### **6.6 Receipt of Documentation**

Receipt of documentation or correspondence sent by MLSSAZ to a Subscriber and/or Participant will be presumed received on the date e-mailed unless a delivery failure notice has been received. Final dates for receipt of replies will be included in all correspondence.

### **6.7 Decision of Appeal Panel**

The responsible Subscriber and/or Participant will be notified of the results of the Appeal within 10 calendar days of the final decision of the Appeal Panel. The decision of the Appeal Panel is considered final, unless the respondent believes they were denied Due Process.

### **6.8 Right to Appeal the Decision of the Appeal Panel**

Upon notification of the decision of the Appeal Panel, the Subscriber shall have the right to appeal the decision based only on "Due Process" as defined in the National Association of REALTORS® Code of Ethics and Arbitration Manual (COEAM). A request for appeal must be filed within twenty (20) calendar days of the date on the decision of the Appeal Panel. Appeals based on due process will be referred to the Arizona Association of REALTORS®

## **Section 7 – Failure to Complete Sanctions**

Failure of an MLS Subscriber to pay fines levied by the MLS Standards Committee or MLS Board of Directors shall be subject to the terms of the MLSSAZ Collection Policy.

Failure of any Participant or Subscriber to abide by the non-monetary sanctions issued by the MLS Standards Committee shall be reviewed by the MLS Board of Directors for possible Suspension of MLS Services until sanctions are satisfied. Failure of any Participant or Subscriber to abide by any sanctions issued or confirmed by the MLS Board of Directors will result in an immediate suspension of MLS Subscription until sanctions have been fulfilled or until the end of the current MLS Subscription period. If, at the end of the current MLS Subscription period, any Participant as an Individual who has not satisfied sanctions issued, Participation shall be terminated. At the start of the next MLS Subscription period, suspended Subscribers shall become Non-Member Licensees with no access to MLS services and subject to the Non-Member Licensee fees and application fees to re-instate as a full MLS Subscriber.